

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Johnny Lawrence, #232835,)	C/A NO. 9:06-3113-CMC-GCK
)	
Petitioner,)	
)	OPINION and ORDER
v.)	
)	
Stan Burt, Warden of Lieber Correctional)	
Institution; and Henry McMaster, Attorney)	
General of South Carolina,)	
)	
Respondents.)	
_____)	

This matter is before the court on Petitioner's *pro se* application for habeas corpus relief filed in this court pursuant to 28 U.S.C. § 2254.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge George C. Kosko for pre-trial proceedings and a Report and Recommendation. On March 21, 2007, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice as Petitioner has not yet exhausted his state court remedies. The Magistrate Judge also recommended that Respondents' motion for summary judgment be granted¹ and that Petitioner's motion for injunctive relief and "Assistance From the Court" be denied. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner filed objections to the Report on March 29 and April 9, 2007.

¹Because the Magistrate Judge recommends dismissing this petition without prejudice for failure to exhaust his state remedies, the court believes that the Magistrate Judge's recommendation relating to the granting of Respondents' motion for summary judgment (contained in the concluding paragraph of the Report) is likely a scrivener's error.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and the Objections of Petitioner, the court agrees with the conclusions of the Magistrate Judge relating to the fact that Petitioner has not yet exhausted his state court remedies. It appears the Petitioner has a pending appeal in the South Carolina Supreme Court of the denial of his Post-Conviction Relief (PCR) Application which contains all the issues raised in the current habeas petition.

Petitioner's lengthy objections raise no argument which would lead this court to believe the Magistrate Judge erred in his recommendation to this court.

IT IS THEREFORE ORDERED that this petition is dismissed without prejudice. Respondents' motion for summary judgment is **denied** to the extent it seeks dismissal of this petition with prejudice. Petitioner's motions for injunctive relief and Assistance From the Court are **denied**.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
April 26, 2007

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